

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 7/9/03 Item 3.a.

File Number
CPA93-020-01

Application Type
Conditional Use Permit Amendment

Council District
9

Planning Area
Cambrian/Pioneer

Assessor's Parcel Number(s)
458-17-013

PROJECT DESCRIPTION

Completed by: Dipa Chundur

Location: East side of Almaden Expressway approximately 500 feet southerly of Branham Lane(4700 Almaden Expressway)

Gross Acreage: 1.7

Net Acreage: 1.7

Net Density: N/A

Existing Zoning: Commercial General

Existing Use: Billiards hall/arcade operating to 2:00a.m. Fri./Sat.

Proposed Zoning: No Change

Proposed Use: Same with operation to 2:00a.m. daily

GENERAL PLAN

Completed by: DC

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: DC

North: Commercial

CN Commercial Neighborhood

East: Commercial, Guadalupe River

CG Commercial General

South: Retail / Commercial

CG Commercial General

West: Commercial

CG Commercial General

ENVIRONMENTAL STATUS

Completed by: DC

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: DC

Annexation Title: Robertsville No.18

Date: 9/6/68

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date:

Approved by: _____
☐ Action
☒ Recommendation

OWNER/DEVELOPER

BABY SUPER DISCOUNT INC
1523 PARKMOOR AV
SAN JOSÉ CA 95128-2407

CONTACT/ APPLICANT

Bob Matsuura
1491 ALMADEN VALLEY DR
SAN JOSÉ CA 95120

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: DC

Department of Public Works

None Received

Other Departments and Agencies

Police Department Memorandum

GENERAL CORRESPONDENCE

None Received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant is requesting approval of a Conditional Use Permit (CUP) Amendment to allow an existing billiards hall, amusement game arcade and snack bar/restaurant with alcohol sales to operate until 2:00 a.m. seven (7) days a week. The original Conditional Use Permit (File No. CP93-020) to allow the conversion of an existing retail building to a billiards facility was approved by the Planning Commission on August 11, 1993 and is remains valid. Under the existing permit, this use is allowed to operate until 2:00 a.m. on Fridays and Saturdays only. Alcohol sales (beer and wine) are allowed in the restaurant for on-site consumption only.

The site is set back approximately 300 feet from Almaden Expressway and is accessed by means of a 30-foot wide ingress/egress easement through the adjacent shopping center. The site is bordered by retail commercial shops to the south, a plant nursery to the north, open space and Guadalupe River to the east, and retail commercial to the west. Multi-family residences are located approximately 440 feet away across Almaden Expressway to the west and about 240 feet away across the Guadalupe River to the east.

The existing developed site also includes an existing monopole near the rear of the site. The monopole and related storage building was also approved in 1993 under a separate Conditional Use Permit (file no. CP93-014). This permit is still valid.

Project Description

The proposed project would continue the pool hall uses in the existing 7,225 square foot building. The applicant is not proposing any remodeling or exterior changes. The facility includes 28 seats for the snack bar/restaurant area that serves beer and wine, 26 pool tables, and an arcade with 14 amusement game devices. This proposal would not allow any increase to the number of pool tables or amusement games. The 49 spaces were proposed as part of the original

Conditional Use Permit. The project site will contain 49 parking spaces, upon a minor modification to the existing situation.

The amendment is only to allow the current hours of operation to be expanded to 2:00 a.m. daily, Sunday through Saturday.

ENVIRONMENTAL REVIEW

The project has been found to be exempt from environmental review under the provisions of CEQA per Section 15301 for “existing facilities”. This exemption is for the operation, permitting, or minor alteration of existing public or private structures or facilities involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The proposal is only to modify the hours of operation of the existing facility, which does not result in any potentially significant environmental impacts. Therefore, this project conforms to the intent of this exemption.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in that the billiard hall and amusement game arcade are commercial uses.

ANALYSIS

The primary issues analyzed in this report includes an evaluation of the compliance with 1) Conditional Use Permit (File No. CP93-020), 2) Zoning Ordinance, 3) City Council Policy No. 6-14 for Evaluation of 24 Hour Uses, 4) Police Department Permits, and 5) ABC Permits

Conditional Use Permit (CP93-020)

The existing use of the site for a billiard hall was approved by Conditional Use Permit (CUP) File No. CP93-020, which is a valid permit. That CUP allowed the conversion of an existing building to a poolroom or billiard hall with up to 26 pool tables, 14 amusement game devices for the arcade, and snack area that serves beer and wine was approved by the Planning Commission on August 11, 1993. The currently approved hours of operation are 6:00 a.m. to 12:00 midnight on Sunday through Thursday, and 6:00 a.m. to 2:00 a.m. Friday and Saturday. Pursuant to the original approval, a Compliance Review was required one year from the date of approval. The Planning Commission held the Compliance Review on July 27, 1994. At the hearing, there were no comments or complaints raised. Therefore, the use was allowed to continue to operate as originally approved.

Since the compliance hearing, Staff noted that the existing landscape areas were not planted in full compliance to the approved plans. A condition has been incorporated in this permit to appropriately bring the site into full compliance for the required landscaping and parking layout prior to implementing the proposed extension of the hours of operation. Other than the above referenced issues, the existing use is in compliance with the conditions of the existing permit.

Conformance to the Zoning Ordinance

The proposed project is to expand the hours of operation past midnight, until 2:00 a.m. seven days of a week for an existing, legally permitted use. A Conditional Use Permit is required in order for any commercial establishment to operate between the hours of 12:00 Midnight and 6:00 a.m. There are no proposed changes to the exterior of the building or site. The project conforms to all relevant development standards with regard to setback and height standards for the CG-Commercial General Zoning District.

The primary project land use is a public billiard hall or poolroom as defined by the Municipal Code. Under the current CG Commercial General zoning regulations a billiard hall requires a CUP. The amusement game arcade is allowed only as an incidental use to other allowed recreational uses, such as a billiard hall. In addition to the Zoning Ordinance (SJMC Title 20), billiard halls are also subject to the requirements of SJMC Title 6 “Business Licenses and Regulations”. A Police Permit, which includes certain restrictions, is required to operate a billiard hall in addition to the CUP (See section related to Police Permits).

The other on-site uses (alcohol sales, amusement game arcade, and snack bar) are considered incidental uses to the billiard hall. The snack bar/restaurant is permitted in the CG-Commercial General Zoning District.

The required parking for the snack area/restaurant calculated at 1 parking space per 2.5 seats is 9.6 spaces. The total net building area excluding the snack area/restaurant is approximately 6,800 square feet. The required parking at the rate of 1 space per 200 square feet is 34 spaces. The combined parking requirement for the two use components adds up to a total of 44 required parking spaces. Under the previous Conditional Use Permit, 49 parking spaces will be provided. There would be no changes to the number of parking spaces required.

Conformance to City Council Policy No. 6-14 “Evaluation of 24 Hour Uses”

The proposed late night use is consistent with the key elements of the City Council Policy No. 6-14 for Evaluation of 24-Hour Uses. The policy recommends that all 24-hour uses should be located 300 feet or more from any property that is residentially zoned, planned or used. The distance should be measured from the building entrance and designated parking area to the closest residential property line. The policy intent is to provide adequate distance or buffer between residential uses and the 24-hour use in order to minimize impacts.

The closest residential property to the project is located approximately 240 feet away across the Guadalupe River. For the past nine years or more, the existing billiard hall has operated from 6:00 a.m. to 12:00 midnight Sunday through Thursday, and the extended hours of operation to 2:00 a.m. on Friday and Saturday. There have been no recorded complaints for this facility based on its current limited extended operation hours. Based on the fact that there are currently no complaints for the hours of operation that are in effect, and the adequate buffer provided by the Guadalupe River, it is unlikely that there would be any impacts on any nearby residential uses.

The policy also recommends all activities are to be conducted within the building after midnight. The existing use and current proposal would be in compliance with this policy.

Compliance with Police Department Permits

The attached Police Department memorandum dated June 16, 2003 indicates that the 2001 crime statistics at this location are significantly over the 20% crime index. Over the past 17 months, a total of 15 calls were received for service and self initiated events at the subject property. However, these calls are not necessarily directly attributable to the existing late night operating hours of this use. The location is in a police beat that is significantly impacted. However, the Police Department is of the opinion, based upon the low volume of contacts, that the proposed change in hours would pose minimal impact to the immediate neighborhood or current law enforcement problems.

A Police Permit is required for the operation of a pool or billiards room as a requirement of San José Municipal Code Title 6 "Business Licenses and Regulations". The existing use is consistent with the key elements of code 6.56 for Pool and Billiards Room. A "Public Pool and Billiard Room Permit" was issued by the Police Department on November 20, 2002 for the operation of 26 pool tables in accordance with Section 6.56.040. The Code requires the applicant to post applicable section of the Code at all times. No person under the age of 16 years shall be permitted in the poolroom after 10:00 p.m. or before 6:00 a.m. unless accompanied by a parent, guardian or adult spouse. The existing use is in compliance with the conditions in the Police Permit.

Compliance with ABC Permit

It should be noted that the issue of on-site alcohol sales is not subject to review under this Conditional Use Permit Amendment. The attached ABC Permit allows the sale of alcohol as an integral part of a Bono Fide Public Eating Place, in that alcohol can only be served along with the sale of food in the snack area/restaurant. The permit requires one (1) security guard in the parking lot to maintain order and provide security between the hours of 9:00 p.m. to 2:00 a.m. Friday and Saturday. The existing use is currently in compliance with all of the conditions in the ABC Permit, but the ABC Permit sill need to be modified as part of this proposal.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the proposal with members of the public.

The Planning Commission recently approved a McDonald's project to the south of the subject site in the adjacent commercial center on March 26, 2003. Adjacent neighbors, also in close proximity to this site, had concerns related to noise due to the drive-through use. Although the nature of the use was slightly different, the hours of operation for the drive-through were restricted to 5:00 a.m. to 12:00 midnight.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site has a designation of General Commercial on the adopted *San José 2020 General Plan Land Use/Transportation Diagram*.
2. The original Conditional Use Permit (File No. CP 93-020) allowed the conversion of an existing building to a 64 seat restaurant, poolroom with up to 26 pool tables, 14 amusement games devices for the video arcade, snack area that served beer and wine was approved by the Planning Commission on August 11, 1993.
3. The applicant is requesting approval of a Conditional Use Permit Amendment to allow the existing poolroom / restaurant to operate until 2:00 a.m. seven day per week.
4. The current Conditional Use Permit allows extended hours of operation until 2:00 a.m. on Fridays and Saturdays only.
5. A Compliance Review was held on July 27, 1994 to evaluate any potential problems as a result of the limited extended hours of operation. There were no complaints identified.
6. No complaints for the existing use have been received by the City's Code Enforcement Division.
7. The Police Department has not indicated any significant concerns regarding the proposed late-night use despite the fact that this police beat has a crime rate over the 20% crime index.
8. The project site is located in the CG Commercial General Zoning District.
9. This project does not include an expansion of the existing structure nor any modifications to the building exterior.
10. This project does not propose any expansion of the existing uses.
11. The applicant has not complied with the approved plan set of the previous Conditional Use Permit regarding landscaping.
12. A condition has been included in this permit to rectify landscape deficiencies prior to the implementation of the extended operating hours.

The Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The project is consistent with the *General Plan/Transportation Land Use Diagram* designation of General Commercial.

2. The project complies with the applicable provisions of the *Zoning Ordinance*.
3. The proposed project is in compliance with the California Environmental Quality Act (CEQA).
4. As conditioned, the proposed use is compatible with surrounding uses.
5. The proposed project complies with the intent of the City Council Policy No. 6-14 for Evaluation of 24 Hour Uses.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to the public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Previous Conditions.** All of the conditions of the previously approved Conditional Use Permit File No. CP 93-020 shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted in this Amendment.
2. **ABC Compliance.** All of the conditions of the existing ABC Permit shall remain unchanged and in full force and effect. A new or modified ABC Permit shall be obtained as necessary for sale of alcohol to reflect the extended hours of operation.
3. **Police Permit Compliance.** All of the conditions of the existing Police Permit Titled "Public Pool and Billiard Room Permit" shall remain unchanged and in full force and effect. The operator shall maintain this permit in good standing.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance with Plans.** Construction and development shall conform to the prior development plans entitled, "Almaden Billards," dated June 11, 1993 on file with the Department of Planning Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
6. **Conformance with Plans.** Construction and development shall also conform to the development plans entitled, "Cuetopia," dated June 26, 2003 on file with the Department of Planning Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
7. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

8. **Hours.** This facility shall be limited to operation between the hours of 6.00a.m to 2.00a.m seven days a week.
9. **Amplified Sound.** All amplified sound shall be contained within the buildings and the buildings shall be adequately insulated to prevent sound from emanating outside.
10. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
11. **Landscaping Compliance.** Planting and irrigation are to be provided, as indicated on the final approved plan set for CP93-06-020. The applicant shall provide photo-documentation of compliance with the landscape requirements of the original Conditional Use Permit to the satisfaction of the Director of Planning prior to the implementation of extended operating hours and within 30 days of the issuance of this permit amendment. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
12. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to extension of the hours of operation and within **60 days** from the date of issuance of the resolution granting the permit.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit was approved by the Planning Commission.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.